

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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THOMAS E. HULL,

Plaintiff-Appellant

v

FORD MOTOR COMPANY,

Defendant-Appellee.

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UNPUBLISHED

January 12, 2001

No. 215603

Wayne Circuit Court

LC No. 97-729628-NO

Before: Collins, P.J., and Jansen and Whitbeck, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order of the trial court granting summary disposition in favor of defendant pursuant to MCR 2.116(C)(10) in this employment discrimination case. We affirm.

Plaintiff brought this action under the Persons with Disabilities Civil Rights Act (PWDCRA), MCL 37.1101 *et seq.*; MSA 3.550(101) *et seq.*, and the Worker's Disability Compensation Act, MCL 418.101 *et seq.*; MSA 17.237(101) *et seq.* Plaintiff began working for defendant in April 1972. He injured his back in a motor vehicle accident in October 1992 and suffered a central herniated disc. In July 1993, plaintiff underwent back surgery and he returned to work in November 1993, under light-duty work restrictions. By January 1994, plaintiff was released to work with no restrictions. In June 1995, following a job transfer, plaintiff reinjured his back. Plaintiff then sought a medical evaluation, and a doctor placed restrictions on plaintiff's work activity. Defendant subsequently placed plaintiff on a medical leave of absence because it did not have any positions available with the restrictions. Plaintiff then requested that he be returned to work to his previous position, but defendant refused to allow that transfer back to his former position.

In September 1995, plaintiff applied for a clerk/typist position, but was denied that job. Later job applications sought by plaintiff were similarly denied. By December 8, 1995, plaintiff's doctor released him to return to work with no restrictions. It is disputed whether plaintiff informed defendant that he was released to work with no restrictions at that time. In April 1996, plaintiff filed a claim for worker's compensation benefits arising from the June 1995 injury. On May 21, 1996, as part of the worker's compensation proceedings, defendant's doctor determined that plaintiff did not need any job restrictions. Beginning in June 1996, plaintiff continued to apply for other positions, but did not receive them. Defendant contends that

plaintiff was not given the positions that he applied for because he either lacked seniority or because of his work restrictions.

Plaintiff filed this lawsuit in September 1997. By October of 1997, plaintiff was placed on a disability retirement status, but was reinstated to active employment in August 1998, and remains actively employed. The trial court ultimately granted defendant's motion for summary disposition in this case, finding that defendant was under no duty to accommodate plaintiff's work restrictions by placing him in a different position and that there was no evidence that defendant ever received notice that plaintiff no longer had any work restrictions. With regard to plaintiff's retaliation claim, the trial court found that there was no adverse action because defendant was under no duty to place plaintiff in another job while he had a work restriction.

We review de novo a trial court's decision regarding a motion for summary disposition. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). Motions under MCR 2.116(C)(10) test the factual support of a plaintiff's claim and the court considers the affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties or filed in the action in a light most favorable to the nonmoving party. *Smith v Globe Life Ins Co*, 460 Mich 446, 454; 597 NW2d 28 (1999). The court's task is to determine whether a genuine issue of any material fact exists to warrant a trial. *Spiek, supra*, p 337.

Plaintiff's first argument is that he stated a valid disability discrimination claim based on defendant's refusal to place him into a vacant position that he could have performed with his restrictions. Plaintiff contends that the trial court erred in considering this to be a reasonable accommodation claim, when it is actually his contention that defendant's reasons for not placing plaintiff into the open positions were a pretext for discrimination based on his disability.

With regard to employment, the PWDCRA provides that an employer shall not "[d]ischarge or otherwise discriminate against an individual with respect to compensation or the terms, conditions, or privileges of employment, because of a disability that is unrelated to the individual's ability to perform the duties of a particular job or position." MCL 37.1202(1)(b); MSA 3.550(202)(1)(b). To establish a prima facie case of disability discrimination, a plaintiff must show: (1) that the plaintiff is disabled as defined by the statute; (2) that the disability is unrelated to the plaintiff's ability to perform the duties of a particular job; and (3) that the plaintiff has been discriminated against in one of the ways set forth in the statute. *Chiles v Machine Shop, Inc*, 238 Mich App 462, 473; 606 NW2d 398 (1999).

Plaintiff argues that defendant discriminated against him by not placing him in any open positions for which he applied after he went on medical leave. The trial court characterized plaintiff's claim as one of "reasonable accommodation," and ruled, consistent with *Rourk v Oakwood Hospital Corp*, 458 Mich 25; 580 NW2d 397 (1998), that reasonable accommodation does not require defendant to transfer plaintiff to another position. Plaintiff, however, argues that his claim is not one of reasonable accommodation, but that defendant's reasons for not placing him in one of the open positions were a mere pretext for discrimination on the basis of his disability.

Regardless of how plaintiff's claim is analyzed, we find that there is insufficient evidence to conclude that defendant's proffered reasons for not placing plaintiff in any of the open

positions were a mere pretext and that the real reasons were discriminatory. The evidence relied on by plaintiff does not indicate that defendant discriminated against him by not placing him in certain positions. Defendant's personnel administrator and personnel director allegedly stated that they regarded plaintiff as having a back problem and would not be able to perform certain of the positions. However, plaintiff *did* have a back problem and the evidence is simply insufficient to raise a material factual dispute regarding whether defendant's reasons were a mere pretext for discrimination. *Hall v McRea Corp*, 238 Mich App 361, 370-371; 605 NW2d 354 (1999).

Plaintiff further contends that he stated a valid claim under the PWDCRA when defendant refused to reinstate him after December 1995 when defendant knew that plaintiff no longer had work restrictions and informed plaintiff that it did not matter if plaintiff's restrictions were lifted. In this regard, the trial court found that, contrary to plaintiff's claim, there was no evidence that plaintiff presented the certificate lifting his restrictions to defendant's medial department. We agree with the trial court that plaintiff has failed to present any evidence that he notified defendant that his work restrictions were lifted. Defendant cannot be held liable for failing to reinstate plaintiff where it had no notice or knowledge that plaintiff's work restrictions had been lifted. Cf. *Rasheed v Chrysler Corp*, 445 Mich 109, 135-136; 517 NW2d 19 (1994).

Accordingly, we affirm the trial court's order granting summary disposition in favor of defendant with respect to the claim of disability discrimination, albeit for different reasons.

Lastly, plaintiff argues that he stated a valid claim of retaliation for pursuing a worker's compensation claim in April 1996. See MCL 418.301(1); MSA 17.237(301)(1). A prima facie case of unlawful retaliation requires evidence that: (1) the plaintiff engaged in a protected activity; (2) this was known by the defendant; (3) the defendant took an employment action adverse to the plaintiff; and (4) there was a causal connection between the protected activity and the adverse employment action. *DeFlaviis v Lord & Taylor Inc*, 223 Mich App 432, 436; 566 NW2d 661 (1997).

Here, plaintiff filed a petition for worker's compensation benefits in April 1996, and was ultimately reinstated to his position in August 1998. During the time interval between the petition and reinstatement, plaintiff was denied certain positions for which he applied, and defendant contends that it was due to either lack of seniority or because plaintiff could not perform the positions because of his back problem.

The trial court ruled that there was no adverse action taken by defendant and, in any event, that plaintiff had failed to set forth any evidence of a causal connection between the filing of the worker's compensation claim and the adverse action. We agree with the trial court that there is simply no evidence that defendant retaliated against plaintiff for filing the worker's compensation claim because there is no evidence of any kind demonstrating that the worker's compensation claim played a role in defendant's decision to deny plaintiff these positions. Rather, as defendant contends, the evidence points to his lack of seniority and his work restrictions as the reasons why he did not receive these jobs. In any event, there is no proof of a causal connection between plaintiff's filing of the claim and any adverse action taken against him. Consequently, plaintiff has not proved a prima facie case of retaliation.

Affirmed.

/s/ Jeffrey G. Collins

/s/ Kathleen Jansen

/s/ William C. Whitbeck